IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6036 of 1999

with

CROSS OBJECTIONS NO. 25 OF 2001

Date of Decision: 13.4.2005

NEW INDIA ASSURANCE CO.LTD.

Versus

DECEASED VIMALABEN WD/O SHANTILAL MOTILAL, THR'O HEIRS

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Jus

Whether approved for reporting?

Appearance:

1. First Appeal No. 6036 of 1999

MR PV NANAVATI for Appellant No.
MR VIBHUTI NANAVATI for Appellant No.
MR SUNIL B PARIKH for Respondent No. 1-4

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

This appeal is directed against the award of the MACT (Aux) Bharuch in MACP No. 870 of 1991 dated June 28, 1999.

Whether reporters of Local Papers may be allowed to see the Judgment?

Shortly stated, claim for compensation of Rs.7 lacs is initiated by the legal heirs of Hasmukhlal Shantilal Shah (Deceased) who died in motor accident which took place on 18.5.1991 at about 3.00 p.m. on Amod Roza Tankariya Road near Road going towards village Denava to Roza Tankariya when Matator Tempo bearing registration No. GQJ-7085 hit the scooter bearing registration No. GJ.7.B.4672. Scooter was being driven by the deceased while Mr. Tiwari was the pillion rider. They had gone to attend the work at Gandhar ONGC Point. Allegation is that the driver of the tempo was driving the vehicle rashly and negligently at high speed. He had come on the wrong side and dashed with the scooter of the deceased. Deceased and pillion rider fell from the scooter. Deceased and Tiwari received injuries. Deceased was contractor in the ONGC earning Rs.3000.00 to Rs.4000.00 per month. He was tax payer. Claimants are legal heirs of the deceased. Opponents are driver cum owner of the tempo and the insurance company with which the tempo was insured.

Opponent No.1 filed written statement (Exh.15). He stated that the claim is false as to taking place of accident with his tempo which he was driving at the time of accident. He denies that he was driving the tempo rashly and negligently. Averments as to income and age of the deceased have been disputed. Opponent No.2 stated that the claim is not maintainable. Accident has not taken place due to rash and negligent driving by driver. It is denied that the deceased was working as a contractor and earning Rs.3000.00 to Rs.4000.00 p.m. and was a tax payer. Age of the deceased is disputed. Similarly, liability to pay the compensation is also disputed.

After recording of evidence, hearing the parties, the claims tribunal came to the conclusion that the deceased sustained injuries in this accident and died as a result thereof. Accident took place due to negligent driving by the driver of the tempo. Consequently, compensation of Rs.2,90,000.00 is awarded by the claims

tribunal carrying interest at the rate of 12 per cent p.a. from the date of the application till realization. Appellant challenged this award. Claimants have also filed Cross Objections seeking enhancement of compensation.

Counsel for both sides have been heard. Record perused. After going through evidence, submission that the driver of tempo is not responsible for accident cannot be accepted since the evidence clearly points out that he was driving the tempo rashly and negligently, otherwise, accident could be avoided. Consequently, finding on this issue is confirmed.

Next question pertains to compensation. From perusal of the record, we find that the best evidence available is the order of assessment passed by the ITO Ward No.I dated February 13, 1992 for AY 1990-91. In this record, total income of Rs.49,280. After making deduction of Rs.8689.00 towards payment of income tax, balance comes to Rs.40591.00 annually and Rs.3382.00 monthly. By applying the principle of datum figure, compensation can be calculated thus, Rs.3382x2+3382=Rs.10,146 less 2/3rd=3382 x 12= Rs.40,584x12=4,87,008.00+Rs.7000.00 (Loss of Expectancy of life)+Rs.7000.00 (Consortium) + Rs.3000.00 (Funeral expenses)+Rs.3000.00 (Transportation charges)+Rs.2500.00 (Loss of Estate) = 5,09,508.00. Accordingly, total compensation works out to Rs.5,09,508.00.

Therefore, award is modified. Appeal is dismissed. Cross Objections are allowed. Claimants are held entitled to enhanced compensation with interest thereon at the rate of 12% p.a. from the date of the application till the date of payment. Enhanced compensation be paid to the claimants within two months. Compensation already deposited and invested in FDRs be released in favour of the claimants by way of an account payee cheque, on proper verification. R. & P. be sent to the Claims Tribunal forthwith. Parties to bear their own costs of this Court. DSP

[BHAWANI SINGH]
CHIEF JUSTICE

[H.K.RATHOD]
JUDGE

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